IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

M/s. Jasnath & Co. Vs. The State of Rajasthan & Ors.
(S.B.Civil Writ Petition No. 6837/2007)

Date of judgment:- 26.10.2007

HON'BLE MR.JUSTICE SANGEET LODHA

Mr. Shridhar Purohit, for the petitioner.

BY THE COURT:-

This writ petition is directed against order dated 28.08.2002 passed by Civil Judge (Senior Division) Jaisalmer, in Civil Original Case No. 4/1997, whereby the application preferred by the petitioner under Section 11 of Arbitration and Conciliation Act, 1996 (in short "the Act of 1996" hereinafter)for appointment of Arbitrator for adjudication of the dispute between the parties, has been rejected.

The brief facts of the case are that the petitioner, a partnership firm engaged in construction and irrigation work, was awarded a contract by respondent no. 4 on behalf of the State of Rajasthan for laying down good earth (black soil) on the banks of R.D. No. 1402.5 to 1405 of Indira Gandhi Canal in Jaisalmer district. It is stated that as the respondent department could not supply the required material to the petitioner in time, therefore, the time for completion of the work under the

agreement was extended. Besides, according to the petitioner during the execution of the work under the work order covered by the agreement the petitioner was asked to perform the additional work of malking. Vide communication dated 27.11.1990, the petitioner requested the respondent no. 2 for making payment of outstanding amount a sum of Rs. 40,000/-. It is alleged that in terms of clause 23 of the agreement after service of the notice dated 31.10.1990, the petitioner made an application on 12.08.1992 before the learned District Judge, Bikaner for appointment of arbitrator which was registered as Civil Case No. 128/1992. However, the said application was got dismissed by the petitioner as not pressed. The petitioner served the respondents no. 1 to 4, with yet another notice dated 26.06.1995 and thereafter, preferred an application under Section 11 of the Act of 1996 on 28.10.2007 before the Civil Judge (Junior Division), Jaisalmer for appointment of an Arbitrator. It was alleged by the petitioner in the said application before the authority designate that after service of the notice dated 09.10.1995 the petitioner was informed by the respondent no. 4 vide communication dated 01.09.1997 that his application for appointment of an arbitrator stands forwarded to the Superintending Engineer, the respondent no. 3, herein. However, no steps were taken by the said authority for appointment of arbitrator. Thus, the petitioner claimed fresh cause of action for

appointment of the arbitrator on the strength of the said communication dated 01.09.1997.

The learned Civil Judge (Junior Division), Jaisalmer, the authority designate has arrived at finding that the cause of action had arisen to the petitioner in the first instance on 31.10.1990 when the notice was served upon the respondents with a request to appoint the arbitrator. The authority designate observed that by virtue of provisions of Section 43 of the Act of 1996, the provisions of Limitation Act 1963 apply to arbitrations, as it applies to proceedings in court, therefore, the application preferred after expiry of period of three years from the date of accrual of the cause of action, is barred by time. The learned authority designate further observed that even if letter dated 01.09.1997 is treated to be an acknowledgment then too such acknowledgment can be enforced only when it is made within the period of limitation. Accordingly, the application preferred by the petitioner has been rejected by the authority designate vide order impugned in the present writ petition.

It is contended by the learned counsel that in view of communication dated 1.9.1997 placed on record as Annexure 4, it cannot be said that the application preferred by the petitioner was barred by time. The learned counsel further contended that the respondents having accepted the claim of the petitioner for appointment of Arbitrator vide communication dated 1.9.2007

cannot contend that the application preferred by the petitioner was barred by time.The learned counsel submits that on the facts and in the circumstances of the case, the authority designate has committed an error apparent on the face of record.

It is not in dispute that in the first instance, the petitioner served the respondents with a notice dated 31.10.1990, for appointment of an Arbitrator for determination of the dispute arisen between the parties. Even after receipt of the notice, the respondents failed to appoint the Arbitrator within a period of two weeks after receipt of the notice. Thus, in terms of Section 8 of the Arbitration Act, 1940, the cause of action had accrued to the petitioner in the first instance, when even after service of the notice as aforesaid, the respondents failed to appoint the Arbitrator in terms of clause 23 of the Agreement. It is also not in dispute that after service of the notice as aforesaid , the petitioner availed the remedy available to him under the provisions of Section 8 of the Arbitration Act, 1940, but, later got the application dismissed as not pessed. The petitioner having availed the remedy under the relevant statute at the relevant time and abandoned his claim, cannot claim fresh cause of action on the strength of communication dated 1.9.1997 placed on record as Annexure 4 inasmuch as, as per Section 9 of the Limitation Act, where once time has begun to run, no

subsequent dis-ability or inability to make an application stops it. Moreover, Section 43(i) of the Arbitration and Conciliation Act, 1996 specifically provides that the Limitaiton Act, 1963 shall apply to arbitrations as it applies to the proceedings in the Court. As per Article 137 incorporated in the Schedule attached to the Limitation Act, 1963 providing for period of limitation, any application for which no limitation is provided elsewhere in the Schedule, the limitation shall be three years from the date right to apply accrues . Thus, the application preferred by the petitioner was ex facie barred by time and the learned Authority designate has committed no error in rejecting the application preferred by the petitioner.

There is yet another aspect of the matter, from persual of the communication dated 1.9.1997 in no manner, it can be inferred that the respondents have communicated the petitioner about the appointment of the Arbitrator. It appears that by the said communication addressed to the Chief Engineer, I.G.N.P. Jaisalmer, the Executive Engineer, I.G.N.P., Mohangarh has only communicated that the details of the petitioner firm's matter relating to the appointment of Arbitrator have already been sent to the Superintending Engineer, IInd Phase, Circle-3, Jaisalmer . Therefore, the inference drawn by the petitioner on the basis of communication dated 1.9.2007, that the respondents had agreed to appoint the Arbitrator, does not appear to be correct. In my

considered opinion, the learned authority designate was also justified in holding that after expiry of the period of limitation even acknowledgement by the respondents of liability, does not give rise to fresh period of limitation to be computed from the date the acknowledgement was so made.

In view of the discussion above, I do not find any error in the impugned judgment dated 28.8.2002 passed by the authority designate.

Accordingly, this writ petition is dismissed with no order as to costs.

(SANGEET LODHA),J.